

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,
)
Plaintiff,
)
vs.
)
JOHN F. FRIEDLANDER,
)
Defendant.
)

No. CR-87-308-JLQ
CV-13-084-JLQ

ORDER DENYING AS MOOT
SUCCESSIVE § 2255 MOTION AND
CLOSING FILES

BEFORE THE COURT is Defendant's Motion to Vacate, Set Aside, or Correct sentence pursuant to § 2255 Motion (ECF No. 4), which was filed on February 28, 2013. Defendant filed the Motion in this court prior to seeking authorization from the Ninth Circuit Court of Appeals to file a second or successive § 2255 petition. Shortly after filing the Motion in this court, Defendant sought authorization from the Ninth Circuit. In its Order of April 10, 2013, this court stayed briefing on the Motion so that Defendant could proceed in the Ninth Circuit on his request for authorization. On October 15, 2013, the Ninth Circuit issued its Order denying Defendant leave to file a second or successive § 2255 Motion.

When a defendant fails to obtain authorization from the Circuit court to file a second or successive § 2255 motion, then the District court lacks jurisdiction to consider the merits of the motion. See Burton v. Stewart, 549 U.S. 147, 156 (2007). Accordingly, this court cannot consider the merits of the Motion.

IT IS HEREBY ORDERED:

1. Defendant's Motion (ECF No. 4) is **DENIED AS MOOT** as Defendant lacked authorization to file the Motion and this court lacks jurisdiction to consider it.

2. The Clerk shall file this Order in both files and furnish a copy to Defendant and to counsel. The Clerk shall then close this file and close the related civil action, 13-CV-84.

IT IS SO ORDERED.

DATED this 17 th day of October, 2013.

s/ Justin L. Quackenbush
JUSTIN L. QUACKENBUSH
SENIOR UNITED STATES DISTRICT JUDGE